THE HON'BLE SRI JUSTICE A. GOPAL REDDY

W.P.No. 4401 of 1994

DATE: 7.12.2006

Between:

Siddhartha Academy of General and
Technical Education, Vijayawada,
represented by its Secretary Sri
Y.V. Rao.

… Petitioner

And

1. Government of Andhra Pradesh,
represented by the Principal Secretary
to Government Medical and Health,
Secretariat, Hyderabad.

2. The University of Health Sciences,
Gunadala, Vkijayawada-520005,
Represented by its Registrar. … RespondentS.

THE HO'BLE SRI JUSTICE A. GOPAL REDDY

WRIT PETITION No.4401 of 1994

ORAL JUDGMENT:

By means of filing this Writ Petition under Article 226 of the Constitution of India, the petitioner – Siddhartha Academy of General and Technical Education, Vijayawada, represented by its Secretary Sri Y.V. Rao seeks for issue of a mandamus directing the Respondent No.1-State of Andhra Pradesh to handover the Management and the properties of the Siddhartha Medical College, Vijayawada to the petitioner-Academy or pay suitable compensation for the acquired property of the Siddhartha Medical College and for an appropriate order.

Before considering the prayer of the petitioner, the following chronological facts-in-brief giving rise to the filing of this petition may be noted:

Siddhartha Academy of General and Technical Education, Vijayawada (hereinafter referred to as 'the academy') is an educational society registered in the year 1975 under Societies Registration Act, 1860 with an object to establish, aid and maintain educational and other institutions to impart education at all stages and for the promotion of Arts, Science, Engineering and Technology etc. With an object to provide medi-care facilities to the people of Vijayawada and to the surrounding rural folk in Krishna District, the Academy made an application to the State Government for establishment of a Medical College at Vijayawada in the name of Siddhartha Medical College. The State Government, vide Letter No.4223/E1/79-10 dated 18.11.1980 granted provisional permission to the academy for starting of a Medical

College with an intake of 100 admissions annually from the academic year 1980-81 subject to certain conditions, important being providing of infrastructure facilities needed for the college, construction of an attached teaching hospital etc. within specified time as indicated in the provisional permission. College was also given the opportunity to utilize the existing facilities at the Government Hospital, Vijayawada. The Government indicated in the said letter that position would be reviewed after three years after the commencement of the college.

Subsequently, vide G.O.Ms.No.276 M & H, Medical and health (E1) Department dated 29.4.1981 the Government made available about 57 Acres (which is inclusive of 15 Acres of land already handed over to the Academy of General and Technical Education) of vacant land situate at Gunadala Village, Vijayawada for the purpose of construction of a 400 bed strength teaching hospital by the Academy according to the standards specified and to handover the same to the Government.

Pending completion of construction of building complex, the college was accommodated and started functioning from the academic year 1980-81 in the premises of Siddhartha Engineering College, Vijayawada. It continued to function so in the said premises till 1985 when permanent building was made ready. It appears that in the year 1983 there was an agitation by the students of the college alleging that the academy has not made ready the building complex and the teaching hospital as required under the provisional permission. There were also allegations against the academy that the funds collected by the College were not exclusively utilized for the College. As the hospital was not made ready, the Government in the year 1983 granted permission to the College to utilize the Government Hospital, Railway Hospital and E.S.I. hospital at Vijayawada for the requirements of the students.

While things stood thus, in the year 1983, the Government enacted A.P. Educational Institutions (Regulation of Admissions and Prohibition of Capitation Fee) Act, 1983 (Act No.5 of 1983) (for short

'the Act') with effect from 30.1.1983, banning capitation fee in professional educational institutions in the State. The Government, vide G.O.Ms.No.46, Education (W) dated 1.2.1983 appointed Sri Priyadarshi Dass, Commissioner, Municipal Corporation, Vijayawada to enquire into the manner of collection of funds by Siddhartha Medical College who submitted report stating that the college collected Rs.401.00 lakhs and incurred an expenditure of Rs.184.00 lakhs leaving a balance of Rs.217.00 lakhs. Subsequently, Government appointed another committee on 10.5.1983 headed by Dr. C. Sita Devi, Principal, Andhra Medical College, Visakhapatnam to find out as to how the college would be run after the enactment of the Act and also to analyze what measures are required to improve the existing system and what finances would be required to run the College. The Committee submitted its report stating that if the College is to be taken over by the Government and the Hospital upgraded, an amount of Rs.18.57 crores would be required. The Government considering the said report, decided to permit the academy to run the Medical College for a period of two more years from August 1983, vide Lr.No.1313/E1/83-4 dated 30.8.1983 with certain conditions.

It appears that before the extended permission was granted in the letter dated 30.8.1983, discussions were held between the representatives of the academy and the Government in the Committee Room of the then Chief Minister on various issues including on the aspect of taking over of the Medical College. Thereupon, Dr. T. Srinivasan, Superintendent, Government General Hospital, Vijayawada was appointed as Special Officer to work out the details of taking over of the College. Thereafter, the petitioner-academy vide its letter dated 5.9.1983 addressed to the then Chief Minister in principle agreed to handover the building and other facilities with equipment etc. after completion of construction of the building complex of the college **without claiming any compensation**. The Government in its letter dated 30.8.1983 referred to above clearly indicated that the

management at the end of two years shall handover the facilities created including the amounts standing in the Medical College Educational Fund to the Government with them **as free of cost without claiming any compensation.** The academy in their letter-dated 5.9.1983 while accepting the proposal, however, requested the Government to make suitable amendments in regard to providing of certain infrastructure facilities such as increasing the bed strength in Government Hospital and E.S.I. hospital to 770 to satisfy the standards of Medical Council of India (MCI) in order to enable the MCI to accord recognition to the College. On 28.11.1983, the academy has submitted representation with new proposals. After examining the said proposals, the Government have communicated their views vide letter No.1313/E1/83-7 dated 24.12.1983 and the academy has also been requested to convey their acceptance of the conditions. Accordingly, the academy has accepted the conditions stipulated by the government vide their letter dated 17.1.1984.

In the meanwhile, Dr. T. srinivasan submitted his report on 8.11.1985. Thereafter, in order to consider the question of takeover of the college, another committee consisting of the Director of Medical Education or his representative, Special Secretary to Government, Finance & Planning (FW) Department, A chartered Accountant, the Executive Engineer (R & B), Vijayawada and Joint Secretary to Government, H.M. & F.W. Department was constituted on 21.3.1986 to study the reports submitted by Sri Priyadarshi Dass and Dr. T. Srinivasan and the Director of Medical Education and to give its opinion regarding the assets and liability and the estimated cost of the buildings of the Medical College and hostel constructed by the academy and the financial implications of such takeover. The committee after taking into account all the factors and reports, recommended for taking over of the Medical College with movable and immovable assets by the Government and that no payment on any account is due from the Government to the petitioners academy.

It appears that subsequently on 2.4.1986 and 3.4.86 the academy held discussions with the Health Minister, Health Adviser and Health Secretary. Thereafter, the Government decided to establish University of Health Sciences at Vijayawada in the premises of Siddhartha Medical College and also a teaching hospital in the land leased out to the medical college and in pursuance thereof the Government enacted University of Health Sciences Act and to commence the University with effect from 1.11.1986.

The academy by letter dated 16.4.1986, while welcoming the decision of the Government to establish the University of Health Sciences in the college premises, requested to pay accommodation charges for accommodating the students and the staffing in Siddhartha Engineering College from 1980-81 as there was delay in getting the plans prepared and approved for the Medical College buildings and amounts spent towards construction of the complex in excess of the receipts of the medical college.

The Government in fulfillment of their commitment, vide G.O.Ms.No.399 dated 17.6.1986 granted administrative sanction for construction and establishment of 400 bedded teaching hospital at Vijayawada at an estimated cost of Rs.750.00 lakhs and this construction is to be taken up on the government land which is alienated in favour of the academy extending over 30.62 acres for which the academy has agreed and given its consent. In effect, the Government have generously and gracefully reciprocated to the offer made by the medical college by providing full-fledged super specialty hospital and setting up University of Health Sciences a unique and a pioneer institution in the entire country to cater the needs of the growing city of Vijayawada and surrounding villages. As already stated, the petitioner-academy in turn expressed their gratitude in letter dated 16.4.1986 and obliged to honour their commitments for handing over of college by 30.8.1986. But, instead of honouring their commitment for handing over the college, the academy in their letter dated 30.7.1986 requested for

payment of a sum of Rs.35,12,851/- alleged to be the amount spent by them in excess of the receipts of the college for construction of buildings; to pay the accommodation charges for the occupation of the building in the premises of engineering College for the period from 3/81 to 10/85 (according to the estimate of R & B Rs.17,62,127/-) and additional amounts spent after 31.3.19986 till the actual date of take over of complex. The Government after examining the aforesaid requests of the academy, vide letter dated 7.10.1986 felt that there is little justification in the academy claiming any compensation and called upon the academy to honour their commitment to handover the possession of the buildings and other facilities with equipment to the Medical college as they agreed to handover the possession after completion of construction without claiming any compensation. The academy in their letter dated 17.10.1986 again requested to consider payment of overspent amounts etc., stating that they are not expecting any compensation from the government for handing over of the college.

Under those circumstances, on 27.10.1986, the Government addressed a letter to the Officer on Special Duty, to take appropriate action for the take over of the medical college so as to synchronize with the establishment of University of Health Sciences. On 29.10.86, the Officer on Special Duty addressed a letter to the Secretary of the Academy to hand over possession of land, building and other equipments on 1.11.1986 to the University of Health Sciences. The academy vide letter No.1337/86 dated 15.12.1986 addressed to the then Chief Minister of Andhra Pradesh intimating the decision of the 10th Annual General Body Meeting of the Academy held on 13.12.1986 and the resolution passed in the meeting to hand over the Siddahartha Medical College to the Government or its nominee University of Health Sciences and requested to consider certain terms and conditions regarding the staff working in the medical college and their absorption in the University and also requested for reimbursement of overspent expenditure etc. The Academy also unanimously resolved to request

the Chief Minister to be present on the occasion of handing over of the college on any day preferably on 21.12.1986.

Subsequently, the academy handed over the College on 21.12.1996 at Vijayawada in the presence of the Chief Minister. Nearly six years thereafter, the academy vide letter dated 24.4.1992 addressed to the Chief Minister seeking re-handing over of the medical college to run it as a private institution. The academy again addressed a letter to the Secretary to Government, Medical and Health, Government of A.P on 29.3.1993 praying for re-handing over the institution or to pay them compensation as contemplated under sections 67 and 68 of the A.P. Education Act, 1982, which was followed by another letter dated 24.4.1993 to the Chief Minister. To the above, the Principal Secretary to Government, Health, Medical and Family Welfare Department, in letter No. 364//E1/93-3 dated 15.11.1993 replied to the Secretary of the Academy stating that in the letters dated 5.9.1983, 16.4.1986 and 30.7.1986 the academy had agreed to hand over to the Government the buildings and other facilities of medical college after completion of the construction of the building complex without claiming any compensation which was reiterated in letter dated 7.10.19986 and accordingly the college was handed over to the University of Health Sciences on 21.12.1986 and as such the request of the academy is not acceptable. The said communication reads as under:

“ Government of Andhra Pradesh
Health Medical and Family Welfare Department
Letter No.364/E1/93-3

From:

The Principal Secretary to Government
Health medical and Family Welfare Department,
Hyderabad.

To
The Secretary,

The Siddardha Academy of General & Technical Education,
Siddartha Nagar, Vijayawada-520010.

Hyderabad Dated:15.11.1993.

Sir,

Sub: Siddartha Academy of General & Technical Education, Vijayawada—Request for handing over back the S.M.C. Vijayawada to the academy or payment of compensation—Request—Reg.

Ref: 1. Your Lr.No.O.C.498/93 dated 29.9.93.
2. Your Lr.No.O.c.681/93 dated 24.4.93.
3. From the U.H.S. Vijayawada Lr.No.UHS/4/Mg/86 Dated 21.6.93.

***

With reference to your letters first and second cited, I am directed to invite attention to your letter dated 5.9.83, 16.4.1986 and 30.7.1986 in which the Academy have agreed to hand over to the Government the buildings and other facilities such as equipment etc., for medical college after completion of the construction of the college without claiming any compensation. Further, the Government in their Letter No.1786/E1/84-26 dated 7.10.1986 have also reiterated the above position and requested to handover the possession of buildings and other facilities such as equipment etc., direct to the University of Health Sciences without claiming any compensation and as when the said University commences functioning. Accordingly, the College was handed over to University of health Sciences on 21.12.1986 in the presence of the then Chief Minister. Therefore, their request for payment of compensation or handing over of institution back to the Academy is considered unacceptable.

Government regret their inability to comply with it.

Yours faithfully,
for Principal Secretary to Government. “

On receiving the above communication, the petitioner has filed the present writ petition for the relief referred to above.

The factual aspects as indicated above are not disputed by the petitioner. The petitioner mainly relied on Section 67 of the A.P.

Education Act contending that Section 67 lays down certain procedure to be followed for acquisition of the property and Section 68 lays down the principles and methods of determining amount for property requisitioned or acquired. It is averred that the Government cannot deprive the petitioner academy of their right to receive the compensation. It is stated that they have only agreed not to claim any compensation for handing over of the management, but in so far as the amount spent on the moveable and immovable properties are concerned, the petitioner never made assurance at the time of handing over the management and possession of the assets to the University of Health Sciences.

The Assistant Secretary to Government filed a detailed counter dealing with all the factual aspects as noted hereinabove contending that the Government in their letter dated 30.8.1983 specifically informed the academy about the conditions for taking over the college. The academy in their letter dated 5.9.1983 requested for certain modifications and conditions imposed by the government followed by a representation dated 28.11.1983, explaining the various difficulties in running the college and making new proposals to the Government. The Government after examining the said proposals in its letter dated 24.12.1983 communicated the views of the Government and in their letter dated 13.1.1984 called upon the academy to convey their acceptance of the conditions mentioned and the academy through its letter dated 17.1.1984 accepted the conditions laid down in the Government letter dated 24.12.1983. In view of the same, the academy is not entitled to compensation as claimed or handing over the college back to the academy.

Sri Kodandaram learned counsel for the petitioner would submit that Government in G.O.Ms.No.276 dated 29.4.1981 earmarked certain land on lease for construction of the hospital and college buildings and the building complex belongs to the society. He further submitted that the academy never waived their right to receive compensation in

accordance with sections 67 and 68 of the Education Act on the moveable and immoveable properties. Before taking over the college, the academy was not given any notice as to why the property should not be taken over. He would submit that the Government have not chosen to follow the procedure contemplated in the Education Act before directing the academy to handover the college and the building complex to the University of Health Sciences and not determined the compensation payable. Section 68 of the Education Act lays down the procedure to determine compensation for the property requisitioned or acquired and, therefore, the government is bound to decide the compensation payable as per sub-section (3) of Section 68.

The learned Government Pleader, on the other hand, contended that since the academy has agreed to handover the college accepting the conditions laid down by the Government in its letter dated 24.12.1983 and since Ac.30.62 cents of government land was alienated to the academy for construction of 400 bed teaching hospital at an estimated cost of Rs.750.00 lakhs which was approved by the Government and it will be handed over to the Government free of cost, it is not open for them to claim compensation. Since the academy has agreed to handover the hospital and building complex with all facilities and equipment without claiming any compensation or to claim any excess amount spent, the Government is not bound to pay any compensation. The claim for reimbursement of amount spent over and above the receipts was considered unreasonable and was not conceded and as such the writ petition is liable to be dismissed.

The Academy was initially granted provisional permission by the Government for establishment of the Medical college vide their communication dated 18.11.1980 and it was specifically mentioned therein that the same would be reviewed after three years after the commencement of the medical college. For proper appreciation, the conditions subject to which the Government granted provisional permission may be noticed:

(i) That the responsibility to secure timely permission from the Medical Council of India and also affiliation of the concerned University will solely rest with the society;

(ii) (a) that a minimum of 20% of the admissions in the above Institution should be kept with the government who would allot these seats for the applicants from the S.C., S.T. and B.C. communities;

(b) that no capitation fee should be collected by the Management from the candidates admitted against the above Government-allotted seats;

(c) **that the position would be reviewed after 3 (three) years after the commencement of the Medical college by the society, after which the rules of reservation, as applicable to admissions in Government Institutions should be adopted by the Society;**

(iii) that in case any Government land is needed for the proposed Medical College, the Society will formally submit due requests for alienation/lease to the appropriate Department along with detailed plans including lay out, draft agreement, with all terms and conditions.

(iv) that the infrastructure facilities needed for the College will be provided in a satisfactory manner by the Society well within the specified time – interim facilities within the first year itself and the permanent arrangement by the third year;

(v) that the building for the attached teaching hospital shall be constructed by the Society according to the standard specified and duly handed over Government within the given time;

(vi) Detailed plans along with time schedule and the binding stipulations including those prescribed by the medical Council of India, University and government in regard to infrastructure referred to in (iv) and (v) above, shall be drawn up and submitted for approval of the Director of Medical Education within three months;

(vii) that in case the existing facilities at the Government Hospital at Vijayawada or the services of the staff thereat are required by the Society a formal request spelling out the terms and conditions may be submitted through proper channel for due approval;

(viii) that after the Society has taken appropriate measures to complete the above steps, the Government's final permission will be communicated."

2. (a) All admissions made at this college shall be based on merit.

(b) the Director of medical Education or his nominee shall be included in the Selection Committee for the admission of the candidates;

(c) all finances received in connection with and for this Medical College shall be kept apart for this purpose along and shall nut under any circumstances be diverted for any other purpose;

(d) the Government will have no liability whatsoever to take over this institution for any lapses committed by the management. But in case such a step becomes necessary neither the institution nor its staff or students shall have any claim on the government. The management must given an indemnity to this effect now itself.

(e) the management should be willing to adhere to any further conditions that might be prescribed in the matter of admissions, donations, reservations, fees etc., if any, and should furnish due undertaking in this regard to the Government.

From the above, it is clear that the academy has to provide infrastructure facilities needed for the college in a satisfactory manner well within the specified time i.e. interim facilities within the first year itself and the permanent arrangement by the third year. It was further obligatory on the part of the academy to construct an attached teaching hospital according to the standard specified and the same shall be duly handed over to Government within the given time. The academy was also given the liberty to make a formal request to utilize the facilities at the Government Hospital at Viajyawada or the services of the staff thereat. Subject to fulfillment of the above requisite conditions only final permission will be granted. Therefore, the Government was prepared to extend any requirement, which the academy needed in establishing the college. Under Clause 2(d) of the provisional permission, the government will have no liability whatsoever to take over the institution for any lapses committed by the management. But, in case such a step becomes necessary, it was made clear that neither the institution nor its staff or students shall have any claim on the government, and the

management was required to give an indemnity to the said effect.

Thereafter, vide G.O.Ms.No.276 M & H dated 29.4.1981, the Government made available about 57 acres of land at Gunadala Village, Vijayawda on lease to the academy for the purpose of construction of a 400 bed strength attached teaching hospital and to handover the same to the Government after construction. The relevant portion of the order reads as under:

> "**Out of the 57 acres, some area of approximately 30 acres is meant for the hospital with 400 bed-strength which the Academy would be constructing and handing over to Government.** Therefore, this piece of land need not be leased to the Academy but handed over for construction of building and transferring the same to the Government as per the agreement. The balance land of approximately about 27 acres meant for the Medical College/Campus with Hostels shall be leased to the Academy on nominal rent. The Collector, Krishna is requested to handover the land immediately to the Academy of General and Technical Education, Vijayawada, and sent proposals for the rent to be levied"

Therefore, as per the conditions of provisional permission, the academy was under an obligation to construct the teaching hospital of 400 bed strength in an extent of 30 acres and to handover the same to the government after construction as part of the agreement for granting final permission.

As already noticed, there were allegations against the academy that the college has not made ready the teaching hospital and the building complex as required under the provisional permission and funds were alleged to have been misused and under those circumstances the Government in the year 1983 granted permission to the college to utilize the Government Hospital, Railway Hospital and E.S.I. hospital at Vijayawada in the interest of the students. Therefore, the College has not fulfilled its obligation to provide permanent nature of infrastructure facilities by the third year by completing the building complex and the teaching hospital as per the provisional permission

granted on 18.11.1980. Thereafter, subsequent to the enactment of Act, 1983 banning capital fee in professional educational institutions, the Government examined the matter in detail in respect of the college in question and considering the report of Dr. C. Sita Devi decided to permit the academy to run the medical college only for a period of two years from 30.8.1983, subject to the following conditions:

1. **It will be obligatory on the management to construct the college buildings and other buildings necessary for the college within a period of two years from now. The Management will handover these facilities plus amounts remaining with them including equipment etc., to the government without compensation**.
2. There will be no other financial commitment as far as Government are concerned except upgrading Vijayawada Government Hospital.
3. Government may impose such conditions as may be necessary to ensure that management fulfils its obligations.

From the above conditions, it is clear that the permission to run the medical College for a further period of two years from August, 1983 was subject to the condition that the management construct the college building and other buildings necessary for the college within a period of two years and subject to handing over of those facilities plus the amounts remaining with them including equipment etc., to the government without compensation. Thereafter, the academy vide letter dated 5.9.1983 addressed to the then Chief Minister had agreed to those conditions and to handover the building and other facilities with equipment etc. after completion of construction of the college without claiming any compensation. In the said letter the academy sought for certain amendments to the conditions imposed in letter dated 30.8.1983. The letter of the academy clearly indicates that there was an agitation by the student community regarding not providing the facilities in the college. It was also requested to upgrade the Vijayawada Hospital providing 770 beds and also E.S.I. Hospital as teaching hospitals to

meet the requirements of Medical Council of India. Obviously, this request by the academy necessitated because there is no mention about the construction of a teaching hospital by the academy in the later permission dated 30.8.1983, which is necessary for getting recognition from MCI. The tenor of the letter dated 5.9.1983 is clearly indicative of the fact that the academy has not been able to complete the construction of the teaching hospital and building complex due to financial constraints and for providing teaching hospital, it completely dependant upon the government requesting it to upgrade the Government Hospital and the E.S.I. Hospital as teaching hospitals for the requirement of the students. In para 6 of the letter dated 5.9.1983, the academy specifically stated thus:

> **" 6 . <u>We have also agreed to hand over to the government, if the government so decide the buildings, and other facilities such as equipment etc., then available for Medical College after completion of the construction of the College without claiming any compensation</u>."**

Subsequent to the above, the academy submitted representation with certain proposals on 28.11.1983 and the Government in turn in their letter dated 24.12.1983 conveyed to the academy to accept the conditions and finally the academy has accepted the conditions stipulated by the government, vide academy's letter dated 17.1.1984. Therefore, the academy having accepted the conditions imposed in letter dated 30.8.1983 to handover the buildings with all facilities plus the amounts remaining with them including equipment etc., to the government without compensation, which is a *sine qua non* for extension of permission for a period of two years from August, 1983 to run the medical college, now cannot turn around and say that they are entitled for compensation for the acquired property of the medical college. The extension was only subject to fulfillment of those conditions. The academy having obtained the extended permission subject to such conditions cannot be permitted to disown their

commitment made to the Government.

As already noticed, before permission was granted in letter dated 30.8.1983 discussions were held between the representatives of the society and the Government in the Committee room of the then chief Minister on the aspect of taking over the Medical College and in fact Dr. T. Srinivasan, Superintendent, Government General Hospital, Vijayawada was appointed as Special officer to work out the details of taking over of the college who submitted his report on 8.11.1985. To consider the question of take over of the college, a committee was constituted on 21.3.1986 to study the reports of Sri Priyadarshi Dass and Dr. T. Srinviasan and the committee recommended for taking over the college with moveable and immovable assets by the government and it was decided that no payment on any account is due from the government to the petitioner-academy, which was accepted by the Government. At no point of time, the academy has challenged the report of the committee regarding take over of the college or on the conclusion arrived at by the committee that no amount on any account is due from the government to the academy.

At this stage, we may notice that the crucial fact of the matter is that even by 1986, the academy has not been able to establish its own attached teaching hospital as required under the provisional permission granted on 18.11.1980 which is the main requirement for establishment of a private medical college.

Subsequent to the report of the committee recommending for take over of the college, the President and Treasurer of the academy held discussions with the Health Minister and Health Adviser and Secretary to the Government on 2.4.1986 and 3.4.1986 after which only the Government decided to establish the University of Health Sciences with a teaching hospital attached to it. Subsequently, the Academy in their letter dated 16.4.1986 clearly stated thus:

> “To
> The Hon’ble Chief Minister
> Government of Andhra Pradesh,

Secetariart,Hyderabad-500022.

In continuation of the discussions our President and the Treasurer had with you on 2.4.86, the discussions they had on 3.4.86 with the Health Minister, Health Adviser and Health Secretary and the announcement you made in the Medical College premises on 9.4.1986, we beg to represent to you as under:

It was most gratifying to note that the Government intended to establish the Institute of Health Sciences (Medical University) in the premises of Siddhartha Medical College and also a Super-specialties Hospital in the same premises. In fact it was our intention when established the Medical College, to put up a 700 bedded hospital on the most modern lines as an adjunct to the Medical College and to cater to the Medi-care needs of the growing city of Vijayawada and about 50 surrounding villages.

The public of Vijayawada and the surrounding villages and in fact the entire district are grateful to you for this very wise decision of a University and Hospital located in the premises of Siddhartha medical college. They are ever grateful to you for this stupendous development in Medical Education and Health Services.

On 2.4.1986 when it was suggested to us that we should offer the medical college to the government, our representatives who met you suggested that in the interests of the developments proposed, the government may themselves ask the Academy to surrender the College to them. Our representatives mentioned to you that the Government may take over the college with all its assets and liabilities, the liabilities being the amount spent in excess of the receipts either by byway of donations or tuition fee of the Medical College. The accounts were already submitted upto 31.1.1986 to the director of Medical Education and their Accounts officer scrutinized the same and submitted his report to the Health Department. The amounts spent upto 31.3.1986 will be submitted in due course."

The academy also requested to consider their request to reimburse the amounts spent in excess of the receipts of the Medical College and also the accommodation charges for the period of occupation by the medical College in the premises of the Engineering College.

From the letters dated 5.9.1983 and 16.4.1986 it is clear that the academy has agreed to handover the college to the Government without claiming any compensation. Even otherwise also, though the academy is well aware that efforts are on right from 1.9.1983 to take over the college by the Government; it never questioned the same, and in fact as evident from the aforesaid letters, the academy itself is inclined to handover the college and welcomed the proposed take over of the college by the Government for their own reasons viz., not fulfilling their obligation to establish a teaching hospital etc. as required under the provisional permission dated 18.11.1980. Therefore, the contention of the learned counsel that no notice was given to the academy before taking over the college does not merit consideration.

There is no dispute that Government in fulfillment of their commitment to the institution and for establishment of the University of health Sciences, vide G.O.Ms.No.399 dated 17.6.1986 granted administrative sanction for construction and establishment of a 400 bedded teaching hospital at Vijayuawada at an estimated cost of Rs.750.00 lakhs. This construction is to be taken up on the Government land, which is alienated in favour of the academy extending over 30.62 acres for which the academy has agreed and given its consent. Therefore, it clearly shows that the government have generously had gracefully reciprocated to the offer made by the medical college by providing full-fledged super speciality hospital and the academy in turn expressed their gratitude for the generosity shown by the government and allotting the land, vide letter dated 16.4.1986 and obliged to honour their commitment for handing over of college by 30.8.1985.

Contrary to its commitment, the academy by letter dated 30.7.1986 while reiterating that they had already expressed their willingness to handover the college and buildings to the Government in view of the establishment of a Medical University and a 400 bed super-specialty hospital attached to it, claimed an amount of Rs.35,12,851/- alleged to be excess amount spent by them for construction of buildings

and to pay the accommodation charges for the occupation of the building in the premises of engineering college for the period from 3/1981 to 10/1985 and additional amounts spent after 31.3.1986 till the actual date of take over of complex, which was rejected by the government by letter dated 7.10.1986.

From the above, it is clear that the Government has fulfilled its commitment to the institution by granting administrative sanction for taking up the construction work on the Government land for establishment of a teaching hospital in the college premises at an estimated cost of Rs.750.00 lakhs. As per the provisional permission granted, the academy was under an obligation to construct the teaching hospital on the government land and to handover the same to the Government without claiming any compensation. The academy has not fulfilled that obligation. The academy having specifically agreed the conditions laid down in letter dated 30.8.1983 of the government to handover the building complex and the teaching hospital without claiming any compensation in their letter dated 5.9.1983 and 16.4.1986, as detailed above, cannot be permitted to say that they are entitled for the excess amounts spent by them. When the Academy was not in a position to comply with the conditions laid down in the provisional permission, the government, taking into account the agitation by the student community against the college for not providing the requisite facilities due to financial constraints, has come to the rescue of the College by extending all the necessary help by providing facilities at the Governments Hospital, E.S.I. Hopsital and Railay Hospital for the requirement of the students, granting necessary amounts for the upgradation of the said hospitals though under the conditions of provisional permission it was not under an obligation to do so. Further, as per clause 2(d) of the provisional permission, the government was under no obligation to take over the college for any lapses committed by the management. In spite of the lapses on the part of the academy in not providing the necessary infrastructure facilities such as completion

of the building complex within the specified time, construction of a teaching hospital, the Government in order to protect the interest of the students of the College, has generously come forward at various stages by rendering all the necessary help. It was only under those circumstances, the academy has no option but to accept the decision of the government to take over the institution without any compensation. At the cost of repetition, it may be noted that under the conditions of provisional permission itself, the academy was under an obligation to construct the teaching hospital according to the standards specified and duly handed over to Government within the time, which they failed to comply with it. The academy having committed lapses in running the college cannot turn around and say that they are entitled to compensation for the equipment etc. or they are entitled to refund of the excess amounts spent. In fact, the academy has been benefited by the generous acts of the Government.

It may also be taken note of the fact that the Academy in its 10th Annual general Body meeting held on13.12.1986 while passing a resolution to handover the college to the Government or its nominee UHS, also made a request to consider certain terms and conditions regarding the staff working in the medical college and their absorption in the University. Even though this request was contrary to the condition laid down in government's provisional permission dated 18.11.1980, the same was favourably considered by the University vide their letter dated 1.1.1987 and the entire academic staff of the medical college were absorbed into the University of Health Sciences according to the norms laid down by the MCI for the posts and the non-teaching staff was also adjusted as per the norms laid down by the State Government for comparable posts. The request of the Academy to retain the name of the College i.e. Siddhartha Medical College without any change at any time was also accepted by the University of Health Sciences.

Admittedly, the college was handed over to the University of Health Sciences on 21.12.1986. For a period of almost six years after

the taking over of the college, the academy has not made any representation seeking compensation and it is only after there was a change in the Government on 24.4.1992, the academy thought it fit to make a representation claiming compensation. Though they claimed compensation earlier in letters dated 5.9.1983, 16.4.1986 and 30.7.1986, the government in their letter No.1706/E1/84-26 HM & FW dated 7.10.1986 rejected the same and they were asked to handover the college which they did. The said letter reads as follows:

> "I am directed to invite your attention to the letters cited and to state that the Siddhartha Academy of General & Technical Education has agreed to handover to the Government the buildings and other facilities such as equipment etc., then available for the medical college after completion of the construction of the college without claiming any compensation.
>
> The government had also reiterated that the Academy handover all the facilities created including the amounts standing to the credit of the Medical college Education Fund to government free of cost without claiming any compensation.
>
> The government has examined very carefully your requestor the reimbursement of the overspent amount and also the rental charges for the accommodation and consider that there is little justification in your claim for compensation now.
>
> I am therefore, directed to request you to honour the commitment made by the academy and handover possession of the building and other facilities such as equipment etc., direct to the University of Health Sciences without claiming any compensation as and when the said University commences to function."

Subsequent to the above, as noticed earlier, the academy has passed a resolution to hand over the college to the University and accordingly the college was handed over on 21.12.1986 in the presence of the then Chief Minister. If really the academy is aggrieved by the action of the Government in taking over of the college without paying compensation or the amounts overspent, the academy ought to have challenged the same in appropriate forum after their request was rejected by the Government on 7.10.1986. Without doing so, the

academy made representations in 1993 after a lapse of six years for compensation. The events clearly spell out that the academy has no objection for take over of the college and in fact it welcomed it.

No doubt Sections 67 and 68 of the Education Act deals with requisition or acquisition of property of a private institution and the method to be adopted for determination of amount therefor. But, in the considered opinion of this court, the same have no application to the facts and circumstances of the case. The handing over of the College was done in peculiar facts and circumstances as narrated hereinabove and in the interest of the student community and in view of the failure of the academy to fulfil their commitment to adhere to the conditions laid down in the provisional permission granted on 18.11.1980. Even though the government was under no obligation to take over, it has been done in the interest of the students and the academy. Even assuming that the petitioner-academy has not waived their right to claim compensation for the amounts spent on the movables and immoveable, such a request cannot be accepted at this length of time.

It is not the case of the academy that the college was taken over all of a sudden. Efforts are on right from 1.9.1983 to take over the college by the government due to the failure of the academy to fulfil their commitment to the provisional permission granted. The academy was under an obligation to fulfil the conditions of provisional permission. The chronological events that have taken place in the instant case right from the sanction of the provisional permission till the handing over of the college to UHS clearly shows that the provisions of Sections 67 and 68 have no role to play in the matter of making any compensation for taking over the College. Taking over of the institution has occurred only because of the failure of the academy to fulfil their commitment to the provisional permission granted for the establishment of the college.

There is no dispute that the building complex was constructed from out of the receipts of the medical college. Whether the academy has spent excess amount towards construction of the medical college

building complex and equipment over and above the receipts of the medical college, whether they are entitled to the same and whether they are entitled to any accommodation charges for occupation of Siddhartha Engineering College building from 1981-1985 on account of delay in getting plans prepared and approved, are all based on factual aspects and relevant records, which cannot be gone into by this court in exercise of the jurisdiction under Article 226 of the Constitution of India. Further, it cannot also be lost sight of the fact that the land on which the building complex was constructed belongs to the government and also the fact that the academy, which was under an obligation to provide infrastructure facilities of permanent nature within three years as per the provisional permission, has failed to comply with the same. The Government having rejected the claim of the petitioner taking into consideration all relevant factors such as that the academy has not fulfilled the conditions of provisional permission, that it has consented to handover the college without claiming any compensation as early as on 7.10.1986, and the academy having accepted the same, cannot, after a lapse of six years, seek for reimbursement of the excess amount incurred towards construction of the building complex and the accommodation charges.

The academy having accepted the conditions laid down in letters dated 30.8.1983/24.12.1983 and handed over the college to the Government in terms thereof as early as in the year 1986, mere making of correspondence claiming that they are entitled to compensation as per the provisions of Section 68 of the Act is of no consequence and such a contention at this distance of time is devoid any of any merit. The Academy if aggrieved of the action of the respondents in taking over of the college or to pay the overspent amounts, ought to have challenged the action of the Government immediately in 1986 itself. Further, as pointed out earlier, the academy has not even challenged the report of the Committee constituted regarding taking over the college and its conclusion that no amount on any account is due from the

Government to the academy. Therefore, the petitioner-academy having handed over the college without any objection and kept quiet for several years, it cannot be permitted to say that they are entitled for re-hading over of the management and properties of the College or compensation or for refund of the overspent amounts. The Writ Petition, therefore, which is devoid of any merit, is liable to be dismissed.

In the result, the writ petition is dismissed. No costs.

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7th December, 2006 **A. GOPAL REDDY, J**

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